



OFFICIAL RESPONSES TO VENDOR QUESTIONS
RFP-2020-NHH-04-FOODS

No.	Question	Answer
1.	Section 1, Introduction Are the listed budgeted costs fixed maximum amounts?	Yes.
2.	Appendix C, System Requirements and Deliverables, Paragraph 2.1.2 Does MyAvatar support HL7?	Yes.
3.	Appendix G-2, Testing Requirements, Paragraph G-2.1, Test Planning, Preparation, and Paragraph G-2.2, Testing, and Table G-2.2, State Recommended Testing Methodology through Regression Testing If a vendor does not do any testing of the software functionality but is willing to provide a mutually agreed upon operational workflow that the State can use to test the functionality of the software, is this acceptable?	Yes, except for any custom developments such as HL7 extracts.
4.	Appendix G-2, Testing Requirements, Table G-2.2, State Recommended Testing Methodology, Security Review and Testing Will the Department waive the requirement for penetration testing?	If the proposed solution is on premises that resides entirely within the State of New Hampshire data center, then penetration testing is not required. If the proposed solution is cloud or remote data center based, then the answer is No.
5.	Appendix H – State of New Hampshire Terms and Conditions, Form P-37, Section 2, Services to be Performed Would the State allow for the following modification? Replace the word “sale” with “license”	No.

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No.	Question	Answer
6.	Appendix H – State of New Hampshire Terms and Conditions, Form P-37, Section 4, Conditional Nature of Agreement Would the State allow the following exception to terms? “If the State is aware the funds will not be available or payment is not received, the State will promptly notify Vendor so services may stop and if the Annual License Subscription Fee is not paid, rights to use the Software will cease.”	No. However, the State may agree to the following: “In the event of a reduction or termination of appropriated funds, the State shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination.”
7.	Appendix H – State of New Hampshire Terms and Conditions, Form P-37, Section 5, Contract Price/ Price Limitation/Payment Subsection 5.3 Would the State agree to remove this Subsection?	No.
8.	Appendix H – State of New Hampshire Terms and Conditions, Form P-37, Section 8, Event of Default/Remedies, Paragraph 8.2.3 Would the State agree to remove this Paragraph?	No.
9.	Appendix H – State of New Hampshire Terms and Conditions, Form P-37, Section 9, Termination, Subsection 9.2 Would the State allow the following be added to the terms? “The Vendor will not refund any dollars paid for services rendered or prepaid for Annual License Subscription Fees.”	Yes.
10.	Appendix H – State of New Hampshire Terms and Conditions, Form P-37, Section 10, Data/Access/Confidentiality/Preservation, Subsection 10.1 Will the State agree for Subsection 10.1 to read: “As used in this agreement, the word “data” shall mean all patient information or items, recipes and menus.”?	No.

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No.	Question	Answer
11.	<p>Appendix H – State of New Hampshire Terms and Conditions, Form P-37, Section 12, Assignment/Delegation/Subcontracts, Subsection 12.1</p> <p>Will the State waive Subsection 12.1?</p>	No.
12.	<p>Appendix H – State of New Hampshire Terms and Conditions, Form P-37, Section 13, Indemnification</p> <p>Will the State waive Subsection 13 and replace with the following?</p> <p>Licensor will indemnify, defend and hold Licensee Indemnified Parties harmless from, at its expense, any action brought against Licensee Indemnified Parties by a third party based upon a claim that Licensee's use of the Software within the scope of these Terms and Conditions and the Order Form(s) infringes a United States, Canadian, United Kingdom, European Union, Australian or New Zealand patent or copyright issued to or held by a third party, or misappropriates a trade secret of such third party; provided that Licensee notifies Licensor promptly in writing of such claim, provides Licensor with the sole control and authority to defend or settle such action or claim, and gives Licensor the authority, information and assistance necessary to settle or defend such claim.</p> <p>In the event a claim of infringement is made, or Licensor believes that such a claim is likely to be made, then Licensor shall at its expense: (a) procure the right for Licensee to continue using the Software; (b) replace or modify the Software so that it becomes non-infringing, without materially decreasing the functionality of the Software; or (c) if neither (a) or (b) above is commercially practical, then at Licensor's sole option, terminate this Agreement upon three (3) months written notice, and either issue to Licensee a credit equal to, or promptly refund to Licensee, the annual fee for the then-current annual period, less an appropriately prorated amount for use, reflecting the number of months during which Licensee enjoyed uninterrupted use of the Software during</p>	<p>No, the Department will not waive Section 13, Indemnification and will not replace it with the language provided.</p> <p>The Department will not indemnify the selected Vendor.</p> <p>The Department may consider modifying Section 18, upon negotiation with the selected Vendor.</p>

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	<p>that annual period.</p> <p>Notwithstanding the foregoing, Licensor shall have no obligation to defend Licensee or to pay any costs or legal fees for any action, claim or settlement, based upon: (a) use of a version of the Software that was not, at the time that the claim arose, the current unaltered version of the Software provided by Licensor hereunder, including, without limitation, failure of Licensee to install Updates containing modifications to make the Software non-infringing; (b) combination, operation, integration or interfacing of the Software with Third Party Materials, other than Third Party Materials or Third Party Software with which the Software was intended to operate as specified in the Documentation associated with the Software if such claim would not have arisen but for such combination, operation, integration or interfacing (regardless of whether or not Licensor has advised Licensee that such use would likely result in a claim of infringement by a third party); (c) use of the Software in a manner other than as authorized by the Documentation, the Order Form(s) or these Terms and Conditions; (d) Licensor's compliance with the designs, plans, or specifications furnished by or on behalf of Licensee; (e) modifications to the Software by any person other than Licensor or its authorized agents or subcontractors; or (f) Licensee's failure to accept any procured right to continue using the Software.</p> <p>THE FOREGOING STATES LICENSOR'S SOLE AND EXCLUSIVE LIABILITY AND THE SOLE AND EXCLUSIVE REMEDY OF LICENSEE INDEMNIFIED PARTIES WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY THIRD PARTY.</p> <p>Licensee shall defend, indemnify and hold harmless Licensor Indemnified Parties from and against any and all third party claims, actions, causes of action, liabilities, damages, costs and expenses, including reasonable legal fees, arising from or related to the exclusions (a) through (f) set out in the third paragraph of this Section 15.</p>	

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No.	Question	Answer
13.	Appendix H – State of New Hampshire Terms and Conditions, Form P-37, Section 14, Insurance, Subsection 14.1, Paragraph 14.1.2 Will the State waive Paragraph 14.1.2?	Yes.
14.	Appendix H – State of New Hampshire Terms and Conditions, Form P-37, Section 15, Workers' Compensation Will the State waive Section 15? Specifically if the Vendor is not located in NH.	No. The Contractor must certify that they are in compliance with or exempt from the requirements of N.H. RSA chapter 281-A.
15.	Appendix H – State of New Hampshire Terms and Conditions, Form P-37, Section 19, Conflicting Terms Would the State allow the following exception to terms? “In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the Vendor’s Agreement shall control.”	No. Vendors may not substitute their own terms for the State’s terms published in this RFP.
16.	Appendix H-25: General Contract Requirements, Section H-25.1, State of NH Terms and Conditions and Contract Requirements Would the State allow the following exception to terms? “The Contract terms set forth in Appendix H: State of New Hampshire Terms and Conditions shall constitute the core for any Contract resulting from this RFP. If there is a conflict in terms, the Vendor’s Software License Agreement will prevail.”	No.
17.	Appendix H-25: General Contract Requirements, Section H-25.5, Vendor Staff Would the State agree to the following modification to terms? “In the Proposal, the Vendor shall assign and identify a Project Manager and key Vendor staff, in accordance with the Requirements and	Yes.

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No.	Question	Answer
	<p>Deliverables of Appendix C: System Requirements and Deliverables and Appendix E: Standards for Describing Vendor Qualifications.</p> <p>The Vendor's selection of a Project Manager will be subject to the prior approval of the State. The State's approval process may include, without limitation, at the State's discretion, Review of the proposed Project Manager's resume, qualifications, references, and an interview. The Vendor's Project Manager must be qualified to perform the obligations required of the position under the Contract, have full authority to make binding decisions, and shall function as the Vendor's representative for all administrative and management matters. The Project Manager must be available to promptly respond during Normal Working Hours within one (1) day to inquiries from the State, and be at the site as needed. The Vendor must use his or her best efforts on the Project.</p> <p>The Vendor shall not change key Vendor staff and Project Manager commitments (collectively referred to as "Project Staff") unless such replacement is necessary due to sickness, death, termination of employment, or unpaid leave of absence. Any such changes to the Vendor's Project Staff shall require the prior written approval of the State. Replacement Project Staff shall have comparable or greater skills with regard to performance of the Project as the staff being replaced and be subject to the provisions of this RFP and any resulting Contract. Notwithstanding anything to the contrary, the State shall have the option to terminate the Contract, at its discretion, if it is dissatisfied with the Vendor's replacement Project Staff."</p>	
18.	<p>Appendix H-25: General Contract Requirements, Section H-25.6, Work Plan</p> <p>Would the State consider the following edit to the first paragraph of the Section H-25.6, Work Plan?</p> <p>"Vendor shall submit a preliminary Work Plan in its Proposal. The Work Plan shall include, without limitation, a detailed description of the Schedule, tasks, Deliverables, major milestones, task dependencies, and payment Schedule. A final Work Plan will be due five (5) business</p>	Yes.

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No.	Question	Answer
	days after the Vendor's welcome call with the State to create the work plan."	
19.	<p>Appendix H-25: General Contract Requirements, Section H-25.7, Deliverables</p> <p>Would the State allow the following be added to the terms?</p> <p>"The Vendor shall provide the State with the Deliverables and Services in accordance with the time frames in the Work Plan. All Deliverables shall be subject to the State's Acceptance as set forth in the Vendor's Agreement and Order Form."</p>	No.
20.	<p>Appendix H-25: General Contract Requirements, Section H-25.8, Licenses</p> <p>Would the State allow for the following modification to terms?</p> <p>H-25.8 LICENSES</p> <p>The State has defined the Software License grant rights, terms and conditions, and has documented the evaluation criteria.</p> <p>H-25.8.1 SOFTWARE LICENSE GRANT</p> <p>The Software License shall grant the State a worldwide, irrevocable, non-exclusive, non-transferable, limited license to use the Software and its associated Documentation, subject to the terms of the Contract for the sites noted in the Agreement and Schedule A.</p> <p>The State may allow its agents and Vendors to access and use the Software, and in such event, the State shall first obtain written Agreement from such agents and Vendors that each shall abide by the terms and conditions set forth herein.</p> <p>H-25.8.2 SOFTWARE AND DOCUMENTATION COPIES</p> <p>The Vendor shall provide the State with online documentation. The</p>	No.

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No.	Question	Answer
	<p>State shall have the right to copy the Software for testing or backup purposes and its associated Documentation for its internal business needs. The State agrees to include copyright and proprietary notices provided to the State by the Vendor on such copies.</p> <p>Deletion of Section H-25.8.3, Restrictions, Section H-25.8.4, Title, and Section H-25.8.5. Third Party and replace these 3 with vendor language.</p>	
21.	<p>Appendix H-25: General Contract Requirements, Section H:25-9, Testing and Acceptance and all subsequent Subsections.</p> <p>Would the State be willing to delete this section?</p>	No.
22.	<p>Appendix H-25: General Contract Requirements, Section 25:10, Warranty and all subsequent subsections</p> <p>Would the State be willing to delete this entire section?</p>	No.
23.	<p>Appendix H-25: General Contract Requirements, Section H-25.11, Ongoing Software Maintenance and Support Levels</p> <p>Is the State willing to allow for the following modification?</p> <p>“The Vendor shall maintain and support the system in all material respects as described in the applicable program Documentation after delivery and the Warranty Period of ninety (90) days through the completion of the Contract term.”</p>	No.
24.	<p>Appendix H-25: General Contract Requirements, Section H-25.11, Ongoing Software Maintenance and Support Levels, Subsection H-25.11.1, Maintenance Releases</p> <p>Is the State willing to allow for the following modification?</p> <p>“The Vendor shall make available to the State the latest program updates, general maintenance releases, selected functionality releases, patches, and Documentation that are generally offered to its customers, at no additional cost to the Annual License Subscription Fee.”</p>	This may be subject to negotiation upon further discussion between a selected Vendor and the State.

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No.	Question	Answer
25.	<p>Appendix H-25: General Contract Requirements, Section H-25.11, Ongoing Software Maintenance and Support Levels, Subsection H-25.11.2, Vendor Responsibility</p> <p>Is the State willing to allow for the following modifications?</p> <p>“The Vendor shall be responsible for performing remote technical support in accordance with the Contract Documents, including without limitation the requirements, terms, and conditions contained herein.</p> <p>As part of the Software maintenance Agreement, ongoing Software maintenance and support levels, including all new Software releases, shall be responded to according to the following:</p> <p>a. Class A Deficiencies - The Vendor shall have available to the State on-call telephone assistance, with issue tracking available to the State, eight (8) hours per day and five (5) days a week with an email / telephone response within two (2) hours of request; or the Vendor shall provide support with remote diagnostic Services, within four (4) business hours of a request; the support hours are Monday to Friday 6:00am to 6:00pm PT (3:00amPT for diet office software).</p> <p>b. Class B & C Deficiencies –The State shall notify the Vendor of such Deficiencies during regular business hours and the Vendor shall respond back within four (4) hours of notification of planned corrective action;</p> <p>The Vendor shall commence repair or replace Software, and provide maintenance of the Software in accordance with the Specifications, Terms and Requirements of the Contract;</p> <p>The Vendor shall maintain a record of the activities related to warranty repair or maintenance activities performed for the State;</p> <p>For all maintenance Services calls, the Vendor shall ensure the following information will be collected and maintained:</p> <ol style="list-style-type: none"> 1. Nature of the Deficiency; 2. Current status of the Deficiency; 	<p>This may be subject to negotiation upon further discussion between a selected Vendor and the State.</p>

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No.	Question	Answer
	<p>3. Action plans, dates, and times;</p> <p>4. Expected and actual completion time;</p> <p>5. Deficiency resolution information;</p> <p>6. Resolved by;</p> <p>7. Identifying number i.e. work order number; and</p> <p>8. Issue identified by.</p> <p>The Vendor must work with the State to identify and troubleshoot potentially large-scale System failures or Deficiencies by collecting the following information: 1) mean time between reported Deficiencies with the Software; 2) diagnosis of the root cause of the problem; and 3) identification of repeat calls or repeat Software problems.</p>	
26.	<p>Appendix H-25: General Contract Requirements, Section H-25.12, Administrative Specifications, Subsection H-25.12.3, Project Workspace and Office Equipment</p> <p>Is the State willing to delete this Subsection?</p>	No.
27.	<p>Appendix H-25: General Contract Requirements, Section H-25.12, Administrative Specifications, Subsection 25.12.4, Work Hours</p> <p>Is the State willing to allow the following update to terms?</p> <p>“Vendor personnel shall provide Services between the Work Hours of 6:00 a.m. and 6:00 p.m. PT, eight (8) hour days, forty (40) hour weeks, excluding State of New Hampshire holidays. The vendor shall provide support for the product 24 hours a day, 7 days a week for an additional payment from the State. Changes to this Schedule may be made upon Agreement with the State Project Manager.”</p>	Yes.
28.	<p>Appendix H-25: General Contract Requirements, Section H-25.12, Administrative Specifications, Subsection 25.12.7, Intellectual Property, and Subsection H-25.12.8, IT Required Work Procedures</p> <p>Is the State willing to waive these two sections?</p>	No.

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No.	Question	Answer
29.	Appendix H-25: General Contract Requirements, Section H-25.12, Administrative Specifications, Subsection H-25.12.9, Computer Use, Part d Is the State willing to delete this contractual obligation?	No.
30.	Appendix H-25: General Contract Requirements, Section H-25.12, Administrative Specifications, Subsection H-25.12.14, Confidential Information. Paragraph 6 Is the State willing to add the following line to the end of paragraph 6: It is agreed that the Software is confidential and proprietary and may not be shared at any time.	This may be subject to negotiation upon further discussion between a selected Vendor and the State.
31.	Appendix H-25: General Contract Requirements, Section H-25.13, Pricing, Subsection H-25.13.1, Activities/Deliverable/Milestones, and Pricing a) Will the State consider deleting this Subsection? b) Does the State agree to perform IT services?	a) No. b) Yes.
32.	Appendix H-25: General Contract Requirements, Section H-25.14, Termination Does the State agree to waive this Section in its entirety?	No.
33.	Appendix H-25: General Contract Requirements, Section H-25.15, Limitation of Liability, Subsections 25-15.1, State, and 25-15.2, State's Immunity Will the State allow these Paragraphs to be replaced with the following? EXCEPT FOR LIABILITY ARISING (i) FROM LICENSEE'S BREACH OF SECTION 2 (LICENSE RESTRICTIONS) AND ANY DISCLOSURE BY LICENSEE OF SOFTWARE OR DOCUMENTATION IN BREACH OF SECTION 14 (CONFIDENTIALITY), (ii) UNDER SECTION 15 (INDEMNIFICATION) OR (iii) FOR PERSONAL INJURY, DEATH, FRAUD OR FRAUDULENT MISREPRESENTATION: (A) LICENSOR'S ENTIRE LIABILITY UNDER THIS AGREEMENT OR	No. The Department may consider a reasonable limitation of liability, subject to negotiation with the selected Vendor.

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No.	Question	Answer
	<p>IN ANY WAY RELATED TO THE SOFTWARE, THE THIRD PARTY SOFTWARE, THE HARDWARE OR ANY RELATED SERVICE WILL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT EQUAL TO THE FEES PAID BY LICENSEE TO LICENSOR PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE CLAIM; AND</p> <p>(B) NEITHER PARTY WILL BE LIABLE FOR:</p> <p>(i) ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT OR IN ANY WAY RELATED TO THE SOFTWARE, THE THIRD PARTY SOFTWARE, THE HARDWARE OR ANY RELATED SERVICES; OR</p> <p>(ii) ANY LOSS OF REVENUE, PROFITS, GOODWILL OR DATA, OR DATA USE (INCLUDING AS A RESULT OF A VIRUS), BUSINESS INTERRUPTION, FAILURE TO REALIZE AN EXPECTED SAVING, CORRUPTION OF DATA, OR CLAIMS AGAINST THEM BY ANY THIRD PARTY,</p> <p>EVEN IF THE PARTIES ARE ADVISED, OR MAY REASONABLY SUPPOSED TO HAVE BEEN AWARE, OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.</p> <p>SUCH LIMITATIONS WILL APPLY REGARDLESS OF HOW THE CLAIM ARISES, WHETHER ARISING BASED ON CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE AND WILL APPLY TO ALL ORDER FORMS, SCHEDULES, ADDENDA, AGREEMENTS AND ATTACHMENTS RELATED TO THIS AGREEMENT.</p> <p>THE FOREGOING LIMITATIONS OF LIABILITY ALLOCATE THE RISKS BETWEEN LICENSOR AND LICENSEE AND FORM A MATERIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. LICENSOR'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.</p>	

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No.	Question	Answer
34.	Appendix H-25: General Contract Requirements, Section H-25.17, Assignment, Delegation and Subcontracts Will the State consider deleting this Section in its entirety?	No.
35.	Appendix H-25: General Contract Requirements, Section H-25.18 , Dispute Resolution Will the State consider deleting this Section and replacing with the following? Upon any dispute, controversy or claim between the parties, each of the parties will designate a representative from senior management to attempt to resolve such dispute. The designated representatives will negotiate in good faith in an effort to resolve the dispute over a period of thirty (30) days. If the dispute is not resolved in this thirty (30) day period, a party may submit the dispute to binding arbitration. Licensee shall select an arbitrator from a list of three (3) arbitrators to be provided by Licensor to Licensee, each of which shall be skilled in the legal and business aspects of the software industry. The parties agree that the arbitrator's fee shall be shared equally between the parties and that each party shall be responsible for its costs, legal and otherwise, in relation to the arbitration, unless the arbitrator decides that the circumstances justify an award of costs. The arbitration shall be conducted in the English language and shall take place in accordance with arbitration rules and in the location set forth in New York, NY utilizing the Commercial Arbitration Rules of the American Arbitration Association.	No.
36.	Terms and Definitions, Business Hours Will the State allow for flexibility in the business hours when services must be provided?	This may be subject to negotiation upon further discussion between a selected Vendor and the State.
37.	Terms and Definitions, Data Would the State consider modifying the definition of Data to be: State's patient information, items, recipes and menus.	No, as addressed in Question 10.

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No.	Question	Answer
38.	<p>Appendix I, Exhibit I, Health Insurance Portability Act Business Associate Agreement, Section 6, Miscellaneous</p> <p>Would the State consider adding Part g as follows?</p> <p>g. Indemnification and limitation of liability. Business Associate will indemnify, defend and hold harmless Covered Entity and its respective employees, directors, officers, subcontractors, agents and affiliates from and against all claims, actions, damages, losses, liabilities, fines, penalties, costs or expenses (including without limitation reasonable attorneys' fees) suffered by Covered Entity arising from or in connection with any breach of this Agreement, or any negligent or wrongful acts or omissions in connection with this Agreement, by Business Associate or by its employees, directors, officers, subcontractors, or agents.</p> <p>Notwithstanding the foregoing and any other provision of this Agreement, Business Associate will not be liable to Covered Entity for any special, incidental, exemplary, punitive, indirect or consequential damages, or for any lost profits arising from or related to this Agreement or the Underlying Agreement. In no event will Business Associate be liable for any loss or damage due to the negligence of Covered Entity and/or use of the Software (as defined in the Underlying Agreement) other than as specified in the Documentation (as defined in the Underlying Agreement). In any event, the aggregate total of Business Associate's liability hereunder and under the Underlying Agreement, cumulatively, whether in contract or tort or otherwise, will not exceed one times (1x) the total of all fees paid to Business Associate pursuant to the Underlying Agreement.</p>	No.
39.	<p>Appendix I, Exhibit J, Certification Regarding the Federal Funding Accountability and Transparency Act (FFATA) Compliance</p> <p>How should this exhibit be handled if a company is publicly held and does not provide executive compensation? Specifically if the answer to Form A, Question 2, is no.</p>	If the answer to Question 2 is NO, no further information is required regarding executive compensation.
40.	Can companies located outside the US apply to this RFP?	No.

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No.	Question	Answer
41.	Will onsite meetings be required?	Yes.
42.	What tasks can be performed outside the US?	Remote support functions can be provided off shore, however, any agent, resource, or support team member who may be in contact with patient data must be US based. Regarding storage of data, see Appendix C, Section C-1, Scope of Work, Section 5, Storage of data.
43.	Regarding the technology environment, what Oracle version do you use?	We have nothing less than Oracle 12 and in some instances have Oracle 13.5.
44.	Do you have Oracle Enterprise edition?	Yes.
45.	Does the State have an Oracle license directly through Oracle?	No.
46.	a) Does the State have Citrix? b) Can the proposal be for a Citrix based solution?	a) Yes. b) No.
47.	As you have two options, on premises or hosted, should vendors answer all questions or only the questions related to the option that they offer?	Answer questions only related to the option you propose.
48.	Can you explain Certificate of Authority and Certificate of Good Standing?	These are two (2) documents that are provided to the State after being selected as the chosen vendor and while submitting an executed contract. The Certificate of Authority is used to verify that the person signing the contract is authorized as an individual from the company to sign a contract. The Certificate of Good Standing certifies that an agency is in good standing with the NH Secretary of State.